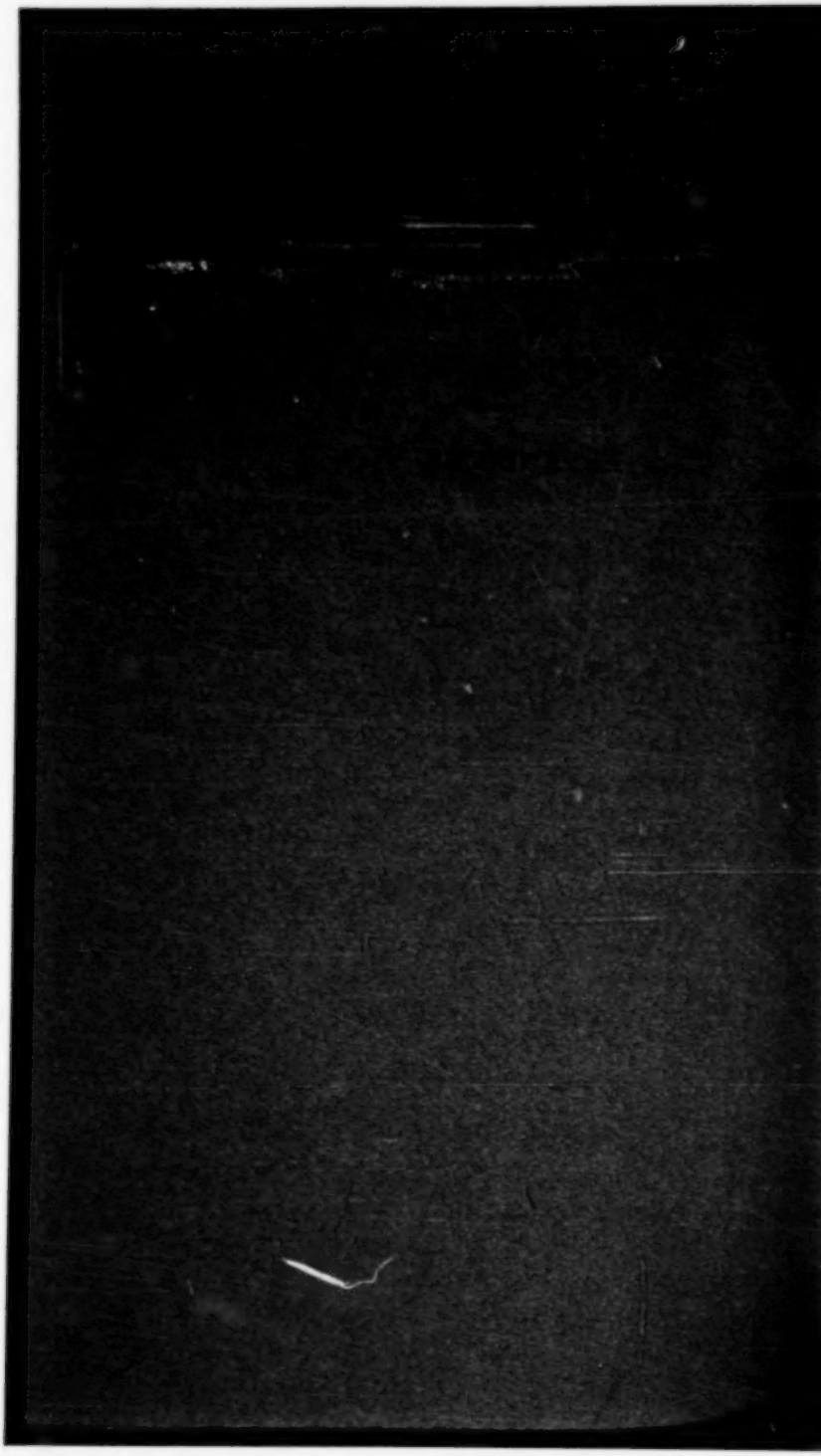

APPENDIX A

Opinion of the Circuit Court

UNITED STATES COURT OF APPEALS,

NINTH CIRCUIT.

Nos. 25551, 25552.

DAMPSKIBSAKTIESELSKABET, etc., et al.,

Appellees,

—v.—

BELLINGHAM STEVEDORING COMPANY,

Appellant,

—and—

Intalco Aluminum Corporation, et al.,

Appellees.

AMERICAN METAL CLIMAX, INC.,

Appellees,

—v.—

BELLINGHAM STEVEDORING COMPANY,

Appellant,

—and—

Intalco Aluminum Corporation, et al.,

Appellees.

March 24, 1972.

Consolidated actions arising after crane fell on ship brought by ship owner and time charterer against stevedore and lessee of crane, in which manufacturer of the crane was impleaded as third-party defendant, and by voyage charterer against stevedore, in which lessee was

impleaded. The United States District Court for the Western District of Washington, William T. Beeks, Chief Judge, 306 F.Supp. 170, entered judgments against stevedore, and it appealed. The Court of Appeals, Choy, Circuit Judge, held that trial court's finding that stevedore's employee was negligent in failing to push stop button and engage manual brake on crane after leaving it at end of shift was not clearly erroneous even though the employee testified that he distinctly remembered pushing the button and engaging the brake.

Affirmed.

Jacob A. Mikkelborg (argued), of Long, Mikkelborg, Wells & Fryer, Earle W. Zinn, of Lycette, Diamond & Sylvester, Seattle, Wash., for appellant.

Thomas J. McKey, Jr. (argued), of Bogel, Gates, Dobrin, Wakefield & Long, Martin P. Detels, Jr. (argued), of Detels, Draper & Marinkovich, John G. Bergmann (argued), of Elvidge, Veblen, Tewell, Bergmann & Taylor, Seattle, Wash., for appellees.

Before DUNIWAY, HUFSTEDLER and CHOY, Circuit Judges.

CHOY, Circuit Judge:

Bellingham Stevedoring Company appeals from a judgment of the district court, 306 F.Supp. 170, holding the appellant liable for damage caused by the negligence of an employee who was the operator of a crane unloading cargo off a ship. We affirm.

Thes hip, Troja, is owned by the partnership Wilh. Wilhelmsen which is composed of Dampskibsaktieselskabet Den Norske Afrika Og Australieline and other interests (Wilhelmsen). The Troja was chartered to both a time-

charterer and a voyage-charterer. At the time of this accident, the time-charterer was A/S Kristian Jebsens Rederi (Jebsens). The voyage-charter was Aluminum Metal Climax, Inc. (A.M.C.) whose plant was the destination of the bulk alumina cargo being unloaded at the time of the accident.

The crane involved in the accident was being leased, along with other dock facilities, by the Intalco Aluminum Corporation (Intalco). The machine had been manufactured and installed by McDowell-Wellman & Co. (McDowell). Pursuant to a stevedoring contract with Intalco, Bellingham Stevedoring Company (Bellingham) provided longshoremen crews, including a crane operator, to unload the Troja.

On December 1, 1966, crane operator Guy Williams was working the Troja on a shift which was scheduled to end at 6:00 p.m. High winds had been blowing all day causing the men to stop operations on at least one occasion in mid-afternoon.

Due to the high winds, Williams decided to shut down the crane before the end of the shift. His decision was also based on the fact that a repair crew was fixing the bucket lift, used to unload the bulk alumina. The longshoremen could not resume work until the bucket was ready.

At approximately 4:50 p.m., Williams brought the crane to a vertical position and set it into its cradle alongside the king-post. Normally, the boom would have been left in a horizontal position so that the next shift crew could begin work right away. This usual procedure was dangerout, however, because the winds would be likely to swing the boom uncontrollably. Soon after Williams left the winch control tower, the boom fell on the Troja, damaging both the ship and the boom.

Appendix A

Wilhelmsen and Jebsens sued Bellingham and Intalco; Intalco impleaded McDowell as a third party defendant. A.M.C. brought a separate suit against Bellingham and the latter impleaded Intalco. Each defendant claimed indemnity from the other defendants for whatever damages might be imposed.

After a consolidated trial (jury-waived), the district judge found that the sole cause of the accident was the negligence of Bellingham's crane operator, Guy Williams. On appeal, Bellingham challenges this factual finding. Bellingham also contends that the district judge erred in awarding damages to Jebsens and A.M.C. in subrogation for payments made to Wilhelmsen to cover the costs of delay.

The finding that Williams' negligence was the sole cause of the accident is a factual determination presumed by this court to be correct, unless "clearly erroneous." Rule 52(a), Federal Rules of Civil Procedure. "We cannot overturn a finding unless, after considering the entire evidence, we are left with the definite and firm conviction that a mistake has been committed." Soderhamn Machine Mfg. Co. v. Martin Bros. Container & Timber Products Corp., 415 F.2d 1058, 1060 (9th Cir. 1969).

Bellingham's challenge to the findings consists of two main pillars. First, Williams testified that he distinctly remembered pushing the "Stop" button and engaging the manual brake. Bellingham contends that the judge erred in disregarding this direct evidence and favoring instead the "speculation" of expert witnesses.

[1] The record indicates ample evidence to support the district judge's determination that Williams failed to do these two things. All parties agreed that the accident resulted from the winch drum moving in a "down" direc-

tion, unwinding and rewinding the cable until it snapped. Had the "Stop" button been pushed, there would have been certain physical consequences when the boom fell. For example, the drum would have been scarred and the brake would have been burned by the friction of the two pieces. Neither piece was so damaged. Also, the electrical circuits would probably have shorted. They did not. The hand brake is a ratchet type, the teeth of which would have been broken by the drum rubbing against the brake arm. After the accident, the ratchet teeth were in good condition and the brake lever was locked in a rest or unengaged position. Had the hand brake been in stop position, the drum would have been scarred and the brake would have been burned. As mentioned above, these indicia were conspicuously absent.

The second factual argument of Bellingham is that the accident could not have been caused by Williams' negligence because of a time problem. The argument runs thus: witnesses testified that it was approximately fifteen minutes from the time Williams left the winch control room until the boom was down; experts agreed that the winch drum would take 7.43 minutes to unwind and rewind; therefore, a different cause, probably the high winds, must have re-activated the motor and caused the winch to begin turning again.

[2] A review of the record convinces us that this argument must also fail. The fifteen minute figure was approximate only. Williams himself stated soon after the accident that he left the winch control room at 4:55 instead of 4:50, as shown in the log book. The 5:05 time entry in the log book was an observation that the boom was down, not that the boom actually fell at 5:05.

True, the experts agreed that the *normal* period for unwinding and rewinding the cable on the winch drum was 7.43 minutes. However, after the accident, much of the cable was discovered wrapped around the shaft which drives the winch drum. This shaft is much smaller in diameter than the drum itself. The drive mechanism would have had to make many more revolutions to rewind the cable, after it snagged on the shaft. It would have taken longer than 7.43 minutes for this to happen.

Based on the physical facts, the district judge found that, although Williams "may very well honestly believe that he pushed the stop button and set the hand brake, I am persuaded that he did not." Bellingham has failed to establish that the judge was clearly erroneous in his findings.

We now turn to Bellingham's argument that the district judge misapplied the law by holding that Jebsens and A. M.C. were entitled to subrogation. Jebsens paid Wilhelmsen for "demurrage," i. e., costs of delay, during the time that the Troja was still tied up at Intalco's dock. During this time, the boom was lying across one of the ship's holds. The damage which the hold sustained was not so bad that the cargo could not be unloaded. However, the Intalco dock was not set up with another crane.

A.M.C. paid for "demurrage" while the ship was being moved to and unloaded at another dock on the Columbia River.

Bellingham stipulated that the costs of delay were the direct and proximate result of the accident. It is clear that Wilhelmsen could have recovered demurrage from Bellingham, if the costs had not already been covered by Jebsens and A.M.C. However, Bellingham contends that Jebsens and A.M.C. were not obligated by the terms of

their charter parties to pay Wilhelmsen for the demurrage, and in paying, the charterers acted as volunteers, which disqualifies them from recovery in subrogation.

The district judge applied a different standard from that urged by Bellingham. Based on the terms of the charter parties, Jebsens and A.M.C. believed in good faith that they were obligated to pay demurrage. The district judge found that this belief was a reasonable interpretation of the terms of the charter-parties and that a reasonable good faith belief that one is obligated to pay is sufficient for application of the equitable doctrine of subrogation.

We agree. The good faith standard follows from the liberal policies behind the doctrine of subrogation. *Cf.* Credit Bureau Corp. v. Beckstead, 63 Wash.2d 183, 385 P.2d 864 (1963); In re Farmers' & Merchants State Bank, 175 Wash. 78, 26 P.2d 631 (1933). The parties have cited no Washington case specifically adopting this rule and we have found none, but the standards is not inconsistent with Washington law.

[3] Jebsens and A.M.C. were confronted with probable or possible liability. To protect their interests and to avoid the costs of defending a suit by Wilhelmsen, the charterers paid the shipowner. We hold that this good faith belief was sufficient to entitle them to subrogation rights against Bellingham for demurrage for which the latter was responsible. See Mosher v. Conway, 45 Ariz. 463, 46 P.2d 110 (1935).

Affirmed.

APPENDIX B

Opinion of the District Court

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

IN ADMIRALTY—No. 300

DAMPSKIBSAKTIESELSKABET DEN NORSKE AFRIKA OG AUSTRALIELINE, WILHELMSENS DAMPSKIBSAKTIESELSKAB, A/S TONSBERG, A/S "TANKFART I, A/S TANKFART IV, A/S TANKFART V, and A/S TANKFART VI, d/b/a "WILH. WILHELMSEN," and A/S KRISTIAN JEBSENS REDERI,

Plaintiffs,

—vs.—

INTALCO ALUMINUM CORPORATION and BELLINGHAM STEVEDORING COMPANY,

Defendants,

McDOWELL-WELLMAN & Co., a corporation,

Third Party Defendants.

IN ADMIRALTY—No. 306

AMERICAN METAL CLIMAX, INC., a corporation,

Plaintiff,

—vs.—

BELLINGHAM STEVEDORING COMPANY, a corporation, et al.,

Defendants,

—and—

INTALCO ALUMINUM CORPORATION,

Third Party Defendant.

Appendix B

The captioned actions arise out of the same casualty and were consolidated for trial and all other purposes. The Court has jurisdiction over both actions under 28 USC 1333.

In Number 300 the partnership Wilh. Wilhelmsen, composed of Dampskibsaktieselskabet Den Norske Afrika og Australieline, Wilhelmsens Dampskibsaktieselskab A/S Tonsberg, A/S Tankfart I, A/S Tankfart IV, A/S Tankfart V, and A/S Tankfart VI (Wilhelmsen), owner of M/S TROJA and A/S Kristian Jebsens Rederi (Jebsens), time charterer of TROJA, brought action against Intalco Aluminum Corporation (Intalco), lessee of a dock, including the crane thereon, at Ferndale, Washington, used by Intalco for the discharge of bulk alumina, and Bellingham Stevedoring Company (Bellingham), who supplied the operator of the crane pursuant to a stevedoring contract with Intalco, for damage sustained when the crane boom fell upon TROJA. McDowell-Wellman & Co. (McDowell), who designed, manufactured and supervised the installation of the crane on Intalco premises, was impleaded as a third party defendant.

In Number 308, American Metal Climax, Inc. (American Metal), voyage sub-charterer of TROJA, brought action against Bellingham for damage sustained when the crane boom fell upon TROJA. Intalco was impleaded as a third party defendant.

Intalco crossclaimed against Bellingham and McDowell to recover crane repair costs.

Bellingham claims indemnity from Intalco and/or McDowell for whatever damages may be allowed against Bellingham.

Intalco claims indemnity against Bellingham and/or McDowell for whatever damages may be allowed against Intalco.

Appendix B

McDowell claims indemnity from Bellingham for whatever damage Intalco and/or American Metal may recover against McDowell.

On December 1, 1966 TROJA was discharging bulk alumina while moored to Intalco's dock. The discharge of the alumina was being accomplished by the use of Intalco's dock crane which was being operated by Bellingham under a stevedoring contract with Intalco. At 1705[1] hours TROJA's number two hatch was damaged when the crane boom fell upon TROJA.

The crane operator, an employee of Bellingham, had topped the crane boom and left the crane tower at 1650.[2] The operator normally would have left the crane in the horizontal position so the next shift could immediately begin work, but because of the high wind condition (gusts up to 50 m.p.h.) he decided that it would be safer if the crane was raised to the vertical position. While on his way off the pier the operator received word the boom had fallen upon TROJA. No one else had operated the crane in the interim.

The Intalco crane required a skilled operator. Certain specific steps were to be followed by him when topping the boom:

(1) Put the bucket and the bucket carriage into the hopper;

(2) Slack the hoist and the close cables (wireropes);

(3) Release the hand brake in the motor control room);

(4) Proceed to the boom control bridge and push the up button, which raises the boom until a limit switch

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[1] Time approximate and not precise.

[2] Time approximate and not precise.

automatically stops the boom just below the safety latches, dogs);

(5) Push the bypass switch, which raises the dogs so the boom can pass, and the up button simultaneously;

(6) Push the stop button when the boom is above the dogs;

(7) Push the down button to lower the boom into the dogs;

(8) Push the stop button;

(9) Check the dog release lever tension to insure the boom is secure in the dogs;

(10) Return to the motor control room and set the hand brake;

(11) Shut off the motor generator.

The crane operator claims to have completed all steps except 11, which he omitted because he thought the mechanics working below on the conveyor belt needed the power. The motor generator was the main power source for the crane. Undeniably if the boom was secure in the dogs and the motor generator had been shut off, the accident could not have happened.

When the boom was lowered into the dogs, pressing of the stop button would have set an electric brake and stopped the motor shutting down the apron hoist drum.[2] However, the physical evidence shows that the apron hoist drum continued to turn in a downward direction

[2] While the operator was required to push the stop button, his failure to do so might not be critical under the normal situation since his shutting off the motor generator would also stop the drum from turning.

unspooling the entire amount of wire rope off the drum. As the drum continued to turn the wire rope began to randomly rewrap in a reverse direction. The wire rope wrapped around the drum shaft causing detachment of the lowering cam limit switch. One of the ropes snagged and was severed. The other rope continued to rewind raising the boom apron out of the dogs toward the king post. Since the apron hoist drum was turning in a downward direction the upper cam limit switch was inoperative. The wire rope, strained by the revised torque when wrapped around the drum shaft, drew taut and severed as the boom apron was crushed against the king post. When the wire rope severed there was a spring release action and the boom was catapulted from its vertical position against the bumper on the king post. As the boom fell it disintegrated the dogs and snapped the eye bars which normally hold it in the horizontal position. The boom landed on the number two hatch of the TROJA damaging both the ship and the crane.

As indicated, if the stop button had been pushed an automatic brake would have operated on the apron hoist drum, preventing the turning of the drum. If the hand brake had been set, it also would have operated on the apron hoist drum slowing, probably stopping, the drum from turning. Immediately following the accident the hand brake was found jammed in an open position with no damage to the ratchet. Further inspection indicated no burning or other damage to the brake drum, which would be normal if the brake had been set and the drum was turning against it.

I'm convinced from the great weight of the evidence and the uncontroverted physical facts that this accident resulted solely from the crane operator's negligence. The operator admits he failed to turn off the motor generator

and while he may very well honestly believe that he pushed the stop button and set the hand brake, I am persuaded that he did not.

I find no merit in Bellingham's argument that the crane was defectively designed, constructed or installed by McDowell. The great weight of the evidence indicates no violation of the Washington Safety Standards or the standards in the industry. It was urged that McDowell should have provided the crane with "Dead Man" type of controls for raising and lowering the boom. While the existence of a dead man type of control might have prevented the accident, I entertain doubt.[4] What is clear is that the failure to provide a dead man type of control was not negligence nor was it a manufacturing defect. The crane was designed to be operated by a skilled operator and when properly operated the crane was not unreasonably dangerous. *Marker* v. *Universal Oil Products Co.*, 250 F.2d 603 (10th Cir., 1957).

Bellingham's argument that an electrical short in the switching mechanism could have reactivated the down button after the stop button had been pushed is also without merit. I suppose it is always true, when considering electrical equipment, that a short in the system might possibly cause unusual results. However, when weighing the uncontroverted physical facts, indicating no burning or other evidence of a short, against the mere possibility of a short, I find the shorting argument to be without evidentiary basis.

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[4] There was considerable evidence indicating that when used, a "dead man" control was on many occasions defeated by the operator who did not like to stand with his finger continuously on the switch. The operator would either tie or wedge the switch down so that it would continue to make connection.

Appendix B

I find no merit in Bellingham's argument that the wind swayed the crane to such an extent that it possibly closed a contact within the motor starter which caused the drum to begin turning in a downward direction. The motor starter was a spring loaded horizontal contactor with a magnetic coil for closing contact and energizing. It was of the type used on high speed trolleys and in marine application, encountering velocity and vibration. The starter would not make contact unless the magnetic coil was energized by the switch or the spring was broken. An inspection indicated no repairs were necessary on the motor starter which is still being used in the crane and it is now operating with the same motor starter.

Bellingham made additional contentions relating to the time differential between topping and accident, holding power of the brake, drum phlange, sheaves, equalizing mechanism, safety hook latch, boom switching design, topping control design, and manual brake electrical interlock. After careful consideration of each contention, I find them to be speculative, and as Bellingham's other contentions, to be based on mere possibility without evidentiary basis.

I do not find Intalco at fault. Intalco was not in control of the crane at the time of the accident. Intalco did provide a safe berth in that both the dock and the crane were reasonably safe and not defective.

I have been urged to apply the doctrine of strict liability against McDowell. I do not find the crane to be in a defective condition or unreasonably dangerous to the user and thus the doctrine is not applicable. Restatement (Second) of Torts §402 A (1965). See *Ulmer* v. *Ford Motor Co.*, 75 Wn. 2d 537, 452 P.2d 729 (1969).

Thus, I find Bellingham responsible for the damages in the total amount of $143,527.06 as stipulated in section one of the Addendum to the Pretrial Order.

Appendix B

I also find Bellingham responsible for the overtime costs totalling $27,974.06 as stipulated in section two of the Addendum to the Pretrial Order. These costs were necessitated by the casualty and incurred in mitigation of further damage.

Section three of the Addendum to the Pretrial Order deals with two items of damage claimed by Wilhelmsen, the first being the loss of use during TROJA repairs and the second being the loss of earnings in the subsequent charter due to late delivery. As to the loss of use during the two day repair period, December 12 and 13, 1966, the proper measure of damage is the net earning of TROJA but for the detention. *The Narvick,* 1923 AMC 263. See McNair, Mocatta and Mustill, *Scratton on Charterparties and Bills of Lading,* 383, 384 (1964) and annotations therein. The testimony indicates that if TROJA had continued on the Jebsens time charter she would have earned $3,332.08 for two days. Had TROJA commenced a grain voyage from Columbia River to Japan during these two days she would have earned $4,445.17 for two days. On a subsequent time charter from Japan to Australia and back, the rate was such that $3,525.06 was earned for two days. In determining the fair value of the TROJA for the two day repair period I averaged the three figures, arriving at $3,767.43 as the net earning of TROJA but for the detention. No operating costs were saved during the two day period and thus $3,767.43 is the amount recoverable against Bellingham.

As to the loss of earnings in the subsequent charter, it was argued that the late delivery was not proximately caused by the Intalco crane damage in that unforeseeable crane breakdown at Alcoa and an electricians' strike were intervening causes. It was also urged that "Jebsens did

not dispatch its duty to mitigate and minimize damages while bringing the TROJA to the Alcoa dock." I find that the strike and the crane breakdown at Alcoa were foreseeable consequences of the original negligent act of Bellingham and were not unforeseeable intervening causes effecting the chain of causation. The mere fact that other forces have intervened between Bellingham's negligence and Wilhelmsen's injury does not absolve Bellingham where the injury was the natural and probable consequence of the original wrong and might reasonably have been foreseen. *Fosbre* v. *State*, 70 Wn.2d 578, 424 P.2d 901 (1967).

On the question of mitigation of damages the burden of proof is on the party asserting it. *Finberg Trading Co.* v. *Republic of China*, 220 F.2d. 844 (5th Cir. 1955); *Burr* v. *Clark*, 30 Wn.2d. 149, 190 P.2d 769 (1948). On the evidence before me Bellingham has not established by a preponderance of the evidence that Wilhelmsen could have avoided the strike or the Alcoa crane breakdown or have otherwise mitigated the damage. Thus I find Bellingham responsible for the $4,253.68 loss of earnings in the subsequent charter due to late delivery.

Section four of the Addendum to the Pretrial Order contains a claim by Wilhelmsen for $1,649.39 paid to the subsequent charterer, Yuasa, to reimburse him for carrying charges due to late issuance of bills of lading. I find these charges to be remote and speculative and thus not recoverable.

Section five of the Addendum to the Pretrial Order contains a claim by Jebsens for demurrage paid to Wilhelmsen for the period 1705 hours December 1 through 0125 hours December 4, 1966. Jebsens, as time charterer, has no direct right to recover against the tort-feasor of owner Wil-

helmsen. *Robins Dry Dock and Repair Co.* v. *Flint*, 275 U.S. 303, 72 L.Ed. 290 (1927). However, Jebsens argues it should have subrogation rights in that it had a duty to pay or alternatively the payment was made in good faith by mistake of fact and law. Bellingham and Intalco reply that Jebsens made payment as a mere volunteer in that the TROJA could have been declared 'Off Hire"[5] and thus no duty to pay existed. I need not decide whether the TROJA should have been declared "Off Hire." The evidence indicates, and the parties agree, that the damage to TROJA would not have prevented discharge of cargo had a crane been available at Intalco. Assuming arguendo, that Jebsens had no duty to pay demurrage to Wilhelmsen in that the TROJA could have been declared "Off Hire" during the period that full working of the vessel was prevented, I find that there was reason to have a good faith doubt as to the application of Clause 15 of the Charter Party and therefore Jebsens may have believed themselves bound to pay.[6] This belief, even though mistaken, would remove Jebsens from the "mere volunteer" category and allow subrogation to Wilhelmsen's rights against Bellingham. *Mosher* v. *Conway*, 46 P.2d. 110 (1935); 83 C.J.S. Subro-

[5] Clause 15 of the Wilhelmsen-Jebsens Charter Party reads: "That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire."

[6] See *The Hackney*, 152 Fed. 520, 522 (1903); and Stretch, I *Chartering of Ships*, 80.

gation §9, p. 607. See *Credit Bureau Corp.* v. *Beckstead*, 63 Wn.2d. 183, 385 P.2d. 864 (1963). Accordingly, I allow Jebsens recovery against Bellingham in the stipulated amount of $3,910.56.[7]

In reaching my decision with respect to liability I have been impressed by the testimony of Thomas Sparling, Homer Lupton and Robert Walker.

Other than as herein stated all claims/cross-claims for damages or indemnity are dismissed.

Taxable costs shall be assessed against Bellingham.

This Opinion shall constitute the Court's findings of fact and conclusions of law under FRCP Rule 52(a). Counsel for plaintiff may prepare a decree in accordance herewith and submit the same within fifteen days of the date hereof, giving ten days notice to all interested parties.

Dated this 28th day of October, 1969.

(Illegible)
United States District Judge

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[7] Paragraph 2(t), page 6 of the Admitted Facts in the Pretrial Order.

APPENDIX C

Excerpted From Martindale-Hubbell Law Directory 1961

EVANS, McLAREN, LANE, POWELL & BEEKS
1700 WASHINGTON BUILDING
SEATTLE 1, WASHINGTON

General Civil and Trial Practice, Corporation, Probate, Real Estate, Taxation, Insurance, Admiralty and Aviation Law

Telephone MAin 4-1700 Cable Address "EMBE"

MEMBERS OF FIRM

Robert H. Evans, born Genesee, Idaho, November 25, 1881; admitted to bar, 1906, Washington. Preparatory education, Public Schools; legal education, University of Washington (1904). Member Seattle, Washington State and American Bar Associations.

William G. McLaren, born Jasper County, Iowa, October 28, 1875; admitted to bar, 1902, Washington. Preparatory education, Grinnell College (A.B.); legal education, Iowa State University Law School. *Fraternities:* Phi Beta Kappa; Phi Delta Phi. City Attorney of Everett, Washington, 1906-1910; Assistant United States District Attorney, Western District of Washington, 1908-1912; Member of State Board of Law Examiners, 1926-1929. *Member:* Seattle (President, 1920), Washington State (President, 1936) and American (Member, Board of Governors, 1937-1940) Bar Associations; American Law Institute.

W. Byron Lane, born Latah, Washington, April 18, 1905; admitted to bar, 1927, Washington. Preparatory education, University of Washington; legal education, University of

Washington (LL.B., 1927). *Fraternity:* Phi Delta Phi. *Member:* Seattle, Washington and American Bar Associations.

George V. Powell, born Seattle, Washington, May 14, 1910; admitted to bar, 1935, Washington. Preparatory education, Princeton University (A.B., 1931); legal education, University of Washington (LL.B., 1934). *Fraternity:* Phi Delta Phi. *Member:* Seattle, Washington State and American Bar Associations.

William T. Beeks, born El Reno, Oklahoma, May 5, 1906; admitted to bar, 1931, Washington. Preparatory and legal education, University of Washington (LL.B., 1931). *Fraternity:* Order of the Coif. *Member:* Seattle, Washington State and American Bar Associations; The Maritime Law Association of the U. S.

Gordon W. Moss, born Mount Vernon, Washington, December 17, 1920; admitted to bar, 1948, Washington. Preparatory education, University of Washington (A.B., 1942); legal education, Stanford University (LL.B., 1948). *Fraternities:* Order of the Coif; Phi Delta Phi; Phi Beta Kappa. *Member:* Seattle, Washington State and American Bar Associations; The Maritime Law Association of the U. S.

William T. Jacobson, born Rugby, North Dakota, July 11, 1923; admitted to bar, 1950, Washington. Preparatory education, University of Washington (B.A., 1947); legal education, Northwestern Law School (J.D., 1950). *Fraternities:* Phi Delta Phi; Order of the Coif. *Member:* Seattle, Washington State and American Bar Associations.

Raymond W. Haman, born St. Maries, Idaho, January 22, 1927; admitted to bar, 1952, Virginia and Washington. Preparatory education, Whitman College; legal education, Washington & Lee University (LL.B., 1952). *Fraternity:*

Phi Delta Phi. *Member:* Seattle, Washington State and American Bar Associations.

Martin P. Detels, Jr., born Brooklyn, New York, June 18, 1923; admitted to bar, 1951, Virginia; 1952, District of Columbia; 1954, Washington. Preparatory education, Williams College (A.B., 1945); legal education, Georgetown University (LL.B., 1951). *Member:* Seattle, Washington State and American Bar Associations; Maritime Law Association of the U. S.

William J. Walsh, Jr., born Seattle, Washington, June 23, 1919; admitted to bar, 1946, Washington. Preparatory education, University of Washington (B.A., 1941); legal education, University of Washington (LL.B., 1943). *Member:* Seattle, Washington State and American Bar Associations.

ASSOCIATES

G. Keith Grim, born Lewiston, Idaho, November 23, 1924; admitted to bar, 1952, Washington. Preparatory education, University of Washington (B.A., 1950); legal education, University of Washington (LL.B., 1952). *Fraternity:* Phi Delta Phi. Assistant Attorney General, State of Washington, 1952-1957. *Member:* Seattle, Washington State and American Bar Associations.

Richard D. Bonesteel, born Seattle, Washington, May 26, 1931; admitted to bar, 1956, Washington. Preparatory education, University of Washington (B.A., 1953); legal education, University of Washington (LL.B., 1956). *Fraternity:* Phi Delta Phi. *Member:* Seattle, Washington State and American Bar Associations.

Frank W. Draper, born Seattle, Washington, June 12, 1929; admitted to bar, 1956, Washington. Preparatory education, University of Washington (B.A., 1951); legal

education, University of Washington (LL.B., 1954). *Fraternity:* Phi Delta Phi. *Member:* Seattle County and Washington State Bar Associations.

Donald P. Marinkovich, born Cathlamet, Washington, December 16, 1931; admitted to bar, 1959, Washington. Preparatory education, University of Washington (B.A., 1954); legal education, University of Washington (LL.B., 1959). *Fraternity:* Phi Delta Phi. *Member:* Seattle, Washington State and American Bar Associations.

David Wayne Gittinger, born Kellogg, Idaho, January 22, 1933; admitted to bar, 1958, Washington. Preparatory education, University of Washington (B.A., 1957); legal education, University of Washington (LL.B., 1957) and Northwestern

APPENDIX D

Order

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 25551

DAMPSKIBSAKTIESELSKABET, etc. *et al.*,

Appellees,

vs.

BELLINGHAM STEVEDORING COMPANY,

Appellant,

and

INTALCO ALUMINUM CORPORATION, *et al.*,

Appellees.

No. 25552

AMERICAN METAL CLIMAX, INC.,

Appellees,

vs.

BELLINGHAM STEVEDORING COMPANY,

Appellant,

and

INTALCO ALUMINUM CORPORATION, *et al.*,

Appellees.

Before: DUNIWAY, HUFSTEDLER and CHOY, Circuit Judges.

Appellant's suggestions of rehearing en banc being inexcusably late, we decline to consider it.

HERBERT Y. C. CHOY
United States Circuit Judge

FILED
AUG 7 1972
EMIL E. MELFI, JR., Clerk